



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1430
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,954	09/22/2000	David Russell Miller	32973	2277

116 7590 05/03/2004

PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER

SOTOMAYOR, JOHN

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/667,954	MILLER, DAVID RUSSELL	
	Examiner	Art Unit John L Sotomayor	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 December 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 17 and 40-66 is/are pending in the application.
- 4a) Of the above claim(s) 43-66 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 17 and 40-42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In response to the amendment filed December 29, 2003, claims 1-16 and 18-39 are canceled and claims 17 and 40-42, and the newly added claims 43-66 are pending.

Election/Restrictions

2. Newly submitted claims 43-66 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims originally presented were directed to a user interface display for use while administering examinations, whereas the newly presented claims are directed toward a method and system for securely administering examinations which is a broader and different invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 43-66 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Construction

3. Regarding claims 17 and 40, it appears as if the applicant is attempting to invoke claim language recitation of structure that looks to the specification without the use of the “means for” recitation required by 35 U.S.C. 112, sixth paragraph. In the instant case, the concept of a circuit

Art Unit: 3714

is not being given its conventional meaning, as that of an electronic circuit, but rather the function of a circuit of software components accomplishing a task. Although applicant is his/her own lexicographer, in the Examiner's opinion the applicant's use of the term "circuit", while not repugnant to the term itself, denotes an unusual use of the term and, in this instance, denotes a software process and not an actual mechanical or electrical circuit. To provide for better clarity in the record, the Examiner would like to recommend a modification in the claim language in which the term "circuit" is replaced by the term "system", or, alternatively, by replacing "circuit" with the term "means for" for closer adherence to 35 U.S.C. 112, sixth paragraph.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 17 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson et al (US 6,507,726) in view of Derzay et al (US 6,434,572) in further view of Kikuchi et al (US 6,532,334) in further view of Braun et al (US 6,056,556).

Regarding claims 17 and 40, Atkinson et al discloses a computer system for performing Internet based testing including a central processing site with a web server and a database with examination content on a first area of a display (Col 3, lines 35-52 and Col 5, lines 55-57), and the web server automatically recording a current state of the examination and relaying this information, including a question, to the web server and receiving an answer back from a web server on a second area of a display (Col 3, lines 13-18 and Col 5, lines 20-47). Atkinson et al does not specifically disclose an examinee activatable clock on the display with real time, elapsed time, time remaining or a combination display, or an examinee activatable calculator on the display. However, Derzay et al teaches a method of implementing a Graphical User Interface (GUI) in use by the web server and web client to provide displays for listing examination questions and content, displaying the content on multiple pages, and providing a system clock for examination timing (Col 13, lines 20-65 and Col 14, lines 1-32). Kikuchi et al teaches that a clock for use during a user activity is a software activatable clock is available to a user that displays real time, elapsed time and time remaining for the user's information. Braun et al teaches an examination system in which the software platform includes the Educational Testing Service's OSA Scientific Calculator available to the examinee upon request (Col 10, lines 1-2). Therefore, it would have been obvious to one of ordinary skill in the art to provide a computer system for performing Internet based testing including a central processing site with a web server and a database with examination content on a first area of a display, and the web server

automatically recording a current state of the examination and relaying this information, including a question, to the web server and receiving an answer back from a web server on a second area of a display as disclosed by Atkinson et al in which a Graphical User Interface (GUI) in use by the web server and web client to provide displays for listing examination questions and content and provide a system clock for examination timing as taught by Derzay et al in which the clock for use during a user activity is a software activatable clock is available to a user that displays real time, elapsed time and time remaining as taught by Kikuchi et al and in which a calculator is available for use by an examinee during the exam as taught by Braun et al for the purposes of placing all of the information tools used by an examinee on a single display for greater efficiency in the examination process.

6. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson et al in view of Derzay et al in further view of Kikuchi et al in further view of Braun et al in further view of Sonnenfeld (US 6,112,049).

Regarding claims 41 and 42, Atkinson et al/Derzay et al/Kikuchi et al/Braun et al does not specifically disclose a testing system with circuits that provide a viewable system clock for examination timing or a question flag or color within the view to indicate selection. Derzay et al discloses a method of implementing a Graphical User Interface (GUI) in use by the web server and web client to provide circuits for listing examination questions and content, displaying the content on multiple pages, and providing a system clock for examination timing (Col 13, lines 20-65 and Col 14, lines 1-32). Derzay et al/Kikuchi et al/Braun et al does not specifically disclose a question flag or color on the view. However, Sonnenfeld teaches that an examination view screen may be designed in a plurality of manners for the comfort of the user, including

Art Unit: 3714

modifying fields, links and buttons, including modifying the appearance of a selected item within the view to indicate choice (Col 13, lines 35-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a GUI for the web server and web client to provide a circuit for listing examination questions and content, displaying the content on multiple pages as disclosed by Atkinson et al/Derzay et al/Kikuchi et al/Braun et al and providing that an examination view screen may be designed in a plurality of manners for the comfort of the user, including modifying fields, links and buttons, including color as a design choice as taught by Sonnenfeld for the purposes of producing a GUI with a view customizable for the examination process required users of the system.

Response to Arguments

Applicant's arguments with respect to claims 17 and 40-42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 3714

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Sotomayor whose telephone number is 703-305-4558. The examiner can normally be reached on 6:30-4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jls
April 28, 2004



JESSICA HARRISON
PRIMARY EXAMINER